

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EILEEN MARTIN and	:	
SHALOM, INC.	:	
	:	
Plaintiffs,	:	
	:	CIVIL ACTION
	:	
v.	:	NO. 99-CV-5574
	:	
CONTINENTAL CASUALTY	:	
COMPANY	:	
	:	
Defendant.		

GREEN, S.J.

February ____, 2000

MEMORANDUM and ORDER

Presently before the Court is Defendant Continental Casualty Company's Motion to Dismiss the Plaintiff's Complaint pursuant to Fed.R.Civ.P. 12(b)(6), and Plaintiff's response thereto. For the foregoing reasons, Defendant's motion will be granted in part and denied in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

Eileen Martin was employed by Shalom, Inc. from December, 1987 to April 4, 1997. During Ms. Martin's employment, Shalom, Inc. purchased Group Long Term Disability Insurance for the benefit of its employees from Continental Insurance Company. After physical problems arose that allegedly prevented Ms. Martin from continuing her employment duties at Shalom, Inc., Ms. Martin applied for long term disability benefits under the aforementioned policy.

Ms. Martin subsequently received twenty-four monthly disability payments under the policy. After that, Continental Insurance sent her a letter advising her that she was not entitled to further payments under the policy. Ms. Martin filed an appeal with Continental's Appeals

Committee and the appeal was denied on June 14, 1999.

As a result of Continental Insurance Company's alleged failure to provide Ms. Martin with long term disability payments beyond a twenty-four month period, Ms. Martin, along with Shalom Inc., filed this cause of action in state court. In their Complaint, the plaintiffs allege that Continental Insurance Company refused to abide by the terms and conditions of the disability policy. Defendant subsequently removed the state filed Complaint to federal district court, asserting that the plaintiffs' claims fall within the purview of ERISA and therefore present a federal question upon which the Court may exercise jurisdiction pursuant to 28 U.S.C. § 1331.

Defendant, Continental Insurance Company, now moves to dismiss Ms. Martin's claims, arguing that ERISA preempts all of the causes of action she sets forth in the Complaint. Moreover, Defendant also moves to dismiss Plaintiff Shalom Inc.'s claims, arguing that Shalom failed to state a claim upon which relief can be granted because its claims are preempted by ERISA, it has no standing to bring its claims pursuant to ERISA, and it has failed to identify any damages as a result of Continental Insurance Company's alleged conduct. In response to the Defendant's Motion to Dismiss, Plaintiffs argue that their claims should be remanded back to state court, or in the alternative, that this Court should grant them leave to file an Amended Complaint to afford them an opportunity to conform with the rules of this Court.

II LEGAL STANDARD

It is, of course, firmly established that in reviewing a Fed.R.Civ.P. 12(b)(6) motion to dismiss, I must accept as true all well-pleaded allegations in the Complaint and draw all reasonable inferences that can be drawn from the alleged facts in the light most favorable to the plaintiffs. See Schrob v. Catterson, 948 F.2d 1402, 1405 (3d Cir.1991). Simply put, dismissal

pursuant to Fed.R.Civ. P. 12(b)(6) is only proper if it appears certain that no relief could be granted under any set of facts that could have been proven. Blaw Knox Retirement Income Plan v. White Consolidated Industries, Inc. 998 F.2d 1185, 1189 (3d Cir. 1993).

III. DISCUSSION

C. Count I - Claims brought by Eileen Martin

In support of its motion to dismiss Ms. Martin's claims, Defendant argues that although Ms. Martin has not specifically asserted an ERISA claim in her Complaint, she is seeking damages pursuant to an insurance contract which clearly falls within the purview of ERISA. (Def.'s Mem. in Supp. of Mot. to Dismiss at 1). While Plaintiff concedes that she is seeking damages under a contract of insurance, she opposes Defendant's Motion to Dismiss, arguing that her claim does not fall under ERISA and she is entitled to have her claims adjudicated in state court.

With certain exceptions, ERISA supersedes any and all State laws insofar as they ... relate to any employee benefit plan covered by the statute. 29 U.S.C. § 1144(a).¹ Thus, the first question that must be answered herein is whether the disability insurance plan at issue falls within the definition of "employee benefit plan" as articulated in the statute. ERISA defines an "employee welfare benefit plan" as any plan, fund, or program which was ... or is ... established or maintained by an employer ... for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care

¹ "State law" was defined by Congress as including "all laws, decisions, rule, regulations, or other State action having the effect of law." 29 U.S.C. § 1144(c)(1). Therefore, a decision handed down by a court applying state law, which would enter the common law of that state, is a "State law" as defined by ERISA.

or benefits, or benefits in the event of sickness, accident, disability, death or unemployment.... 29 U.S.C. § 1002(1). Continental Casualty Company issued Group Long Term Disability Insurance Policy No. SR-0083082060 to Shalom, Inc. to provide certain eligible employees with disability insurance coverage. See (Pls.' Compl. at Ex A). Thus, it appears that the policy qualifies as an employee welfare benefit plan under 29 U.S.C. § 1002(1).

Since the policy at issue in Ms. Martin's Complaint fits within the definition of an employee welfare benefit plan, I now turn to the question of whether Ms. Martin's state law contract claims "relate to" an ERISA governed plan, within the meaning of § 1144(a)'s preemptive reach. A claim "relates to" an ERISA plan if it is "specifically designed to affect employee benefit plans, if it singles out such plans for special treatment, or if the rights or restrictions it creates are predicated on the existence of such a plan." United Wire, Metal and Mach. Health and Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1192 (3d. Cir. 1993). In the instant case, Ms. Martin brings common law claims against Continental Insurance arguing that Continental denied her a benefit due under the long term disability policy. It is clear, therefore, that no matter how her claim is characterized, her goal is to recover proceeds allegedly due her under the employee benefit plan at issue in this case. Since Ms. Martin's claims reference the long term disability policy and the policy itself forms the basis for recovery under the plaintiff's contractual claims, it is clear that her claims "relate to" the employee benefit plan and are preempted by ERISA. See Garner v. Capital Blue Cross, 859 F.Supp. 145, 149-50 (M.D.Pa.,1994), aff'd, 52 F.2d 314 (3d. Cir.), cert. denied, 116 S.Ct. 189 (1995)(finding that a breach of contract claim for failure to pay plan benefits is preempted by ERISA).

Having found that Ms. Martin's state law cause of action against Continental Insurance is

preempted by ERISA, I will dismiss her state law claim with prejudice. Insofar as I have determined that Plaintiff Martin's asserted claim is, in fact, an ERISA claim, I will retain jurisdiction over her federal cause of action.

B. Count II - Plaintiff Shalom, Inc.'s Cause of Action

In its Motion to Dismiss Shalom's state contract law claim, Defendant argues that the claims are preempted by ERISA, that Shalom Inc. has no standing to bring claims pursuant to ERISA, and can prove no damages in connection with Continental's denial of coverage to Ms. Martin. It is important to note that Shalom, Inc. never claimed to have standing under ERISA. Rather, it asserts a right to bring a state law cause of action against Defendant Continental Casualty Company as a party to the insurance contract at issue in this case.

Under ERISA, "[a] civil action may be brought--(1) by a participant or beneficiary--(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). ERISA defines the term "participant" as "any employee or former employee of an employer ... who is or may become eligible to receive a benefit of any type from an employee benefit plan." 29 U.S.C. § 1002(7). A "beneficiary" is a "person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8). According to the definitions provided under the statute, Shalom, Inc. is neither a participant nor a beneficiary. Therefore, it does not have standing to bring a cause of action under 29 U.S.C. § 1132. Shalom, Inc.'s lack of standing to bring an ERISA claim against Continental, however, does not preclude it from bringing common law claims against the defendant insurance company for breach of contract. Therefore, at this stage of the litigation, I

cannot find that Shalom, Inc. failed to set forth facts in support of its state law claim which would entitle it to relief. Thus, Continental's Motion to Dismiss Shalom, Inc.'s state law claim will be denied.

IV. CONCLUSION

For the foregoing reasons, Plaintiff Martin's state law claims shall be dismissed with prejudice, as they are preempted by ERISA. Insofar as I have determined that Plaintiff Martin's state law claims fall under the purview of ERISA, I will not dismiss her federal cause of action.

The motion to dismiss Plaintiff Shalom, Inc.'s state law claims will be denied. Moreover, Plaintiff Shalom's request to have its cause of action remanded to state court will be dismissed without prejudice to Shalom, Inc. filing a petition to remand its state law claims within ten days of the accompanying Order.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

EILEEN MARTIN and
SHALOM, INC.
Plaintiffs,

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CIVIL ACTION
NO. 99-CV-5574

v.
CONTINENTAL CASUALTY
COMPANY
Defendant.

ORDER

AND NOW, this ____ day of February 2000, upon consideration of the Defendant's Motion to Dismiss and Plaintiffs' response thereto, **IT IS HEREBY ORDERED** that :

A. Plaintiff, Eileen Martin's state law claim is **DISMISSED WITH PREJUDICE**.

Defendant having asserted that the claim is embodied by ERISA and the court agreeing thereto, **IT IS FURTHER ORDERED** that the Plaintiff's claim based on ERISA is retained;

B. Defendant's Motion to Dismiss Plaintiff, Shalom, Inc.'s state law claim is **DENIED**, and Plaintiff Shalom's request to have its cause of action remanded to state court will be **DISMISSED WITHOUT PREJUDICE** to Shalom, Inc. filing a petition to remand its state law claims within ten (10) days of this Order; and

C. Pursuant to the Plaintiffs' request for leave to amend their Complaint, said request is **GRANTED**. Plaintiffs may file an Amended Complaint within ten (10) days of this Order.

BY THE COURT,

CLIFFORD SCOTT GREEN, S.J.